

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

AT HUNTINGTON

ALESIA NORMAN,

Plaintiff,

V.

CIVIL ACTION NO. 3:05-0385

SOCIAL SECURITY ADMINISTRATION,

Defendant.

FINDINGS AND RECOMMENDATION

For reasons not apparent from the pleading, Alesia Norman has filed a complaint with the Court naming as the defendant the Social Security Administration. The matter is presently pending before the Court on her application and affidavit seeking leave to proceed in forma pauperis under the provisions of 28 U.S.C. §1915.

Examination of the application and affidavit submitted in support of the request to proceed in forma pauperis establishes that plaintiff is indigent and entitled to proceed herein without prepayment of fees. As a consequence of the fact that plaintiff proceeds in forma pauperis, and in accordance with the requirements of 28 U.S.C. §1915(e)(2)(B), the Court is required to dismiss the case if it determines that the action is “frivolous or malicious” or the complaint “fails to state a claim on which relief may be granted.” Examination of the complaint satisfies the Court that dismissal is required under these criteria.

As the Court pointed out in Neitzke v. Williams, 490 U.S. 319, 327-28 (1989), §1915 “accords judges not only the authority to dismiss a claim based on an indisputably meritless legal

theory, but also the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." To the extent that plaintiff's complaint is intelligible, it is apparent that she has failed to state a cognizable claim and that her claims are frivolous as that term has been defined by the Court in Neitzke. Under such circumstances, dismissal of the complaint is required.

RECOMMENDATION

On the basis of the foregoing, it is **RESPECTFULLY RECOMMENDED** that plaintiff's application to proceed in forma pauperis be granted and that her complaint and this action be dismissed.

Plaintiff is hereby notified that a copy of these Findings and Recommendation will be submitted to the Honorable Robert J. Staker, Senior United States District Judge, and that, in accordance with the provisions of Rule 72(b), Fed.R.Civ.P., she may, within thirteen days from the date of filing of these Findings and Recommendation, serve and file written objections with the Clerk of this Court identifying the portions of the Findings and Recommendation to which objection is made and the basis for such objection. The Judge will make a de novo determination of those portions of the Findings and Recommendation to which objection is made in accordance with the provisions of 28 U.S.C. §636(b) and plaintiff is advised that failure to file timely objections will result in a waiver of her right to appeal from a judgment of the district court based on such Findings and Recommendation. Copies of objections shall be served on all parties with copies of the same to Judge Staker and this Magistrate Judge.

The Clerk is directed to file these Findings and Recommendation and mail a copy of the same to plaintiff.

DATED: May 11, 2005



MAURICE G. TAYLOR, JR.
UNITED STATES MAGISTRATE JUDGE